

1 Pamela M. Egan, WSBA No. 54736 (*pro hac vice*)
2 POTOMAC LAW GROUP PLLC
3 1905 7th Ave. W
4 Seattle, WA 98119
5 Telephone: (415) 297-0132
6 Email: pegan@potomacclaw.com
7 *Attorneys for Mark D. Waldron, Chapter 11 Trustee*

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 11

**CHAPTER 11 TRUSTEE'S REPLY
TO LIMITED OBJECTION TO
CHAPTER 11 TRUSTEE'S MOTION
FOR ORDER APPROVING SALE
OF EQUIPMENT FREE AND
CLEAR OF LIENS**

Telephonic Hearing

Date: April 9, 2020

Time: 10:30 a.m. PT

Telephone: 877-402-9753

Access Code: 3001392

Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the
“Trustee”), respectfully replies to the *Limited Objection to Chapter 11 Trustee’s*
Motion for Order Approving Sale of Equipment Free and Clear of Liens (the

CHAPTER 11 TRUSTEE’S REPLY TO LIMITED OBJECTION TO CHAPTER 11
TRUSTEE’S MOTION FOR ORDER APPROVING SALE OF EQUIPMENT FREE AND
CLEAR OF LIENS - 1

1 “**Port’s Objection**”), filed by the Chelan Douglas Regional Port Authority,
2 formerly the Port of Douglas County (the “**Port**”) on April 6, 2020 [ECF 527].

3 Unless otherwise defined herein, capitalized terms have the meanings
4 ascribed to them in the *Chapter 11 Trustee’s Motion for Order Approving Sale of*
5 *Equipment Free and Clear of All Liens, Claims and Interests, Approval of Notice*
6 *Thereof and Related Relief*, filed on March 30, 2020 [ECF 520] (the “**Equipment**
7 **Sale Motion**”).

8 I. INTRODUCTION

9 This Reply makes three points. First, the Trustee has complied with this
10 Court’s Order pursuant to which the Trustee has until May 7, 2020 to remove the
11 Pangborn Equipment from the Pangborn Site. Otherwise the Port will have relief
12 from stay to do what it wishes with the Pangborn Equipment and the Pangborn
13 Equipment will be deemed abandoned. *See Order Granting Relief From*
14 *Automatic Stay, Abandonment of Property of the Estate and Denying Waiver of*
15 *FRBP 4001(a)(3)*, entered on the Court’s docket on March 24, 2020 [ECF 515]
16 (the “**MRS/Abandonment Order**”). Second, the estate has a \$2 million liability
17 policy for claims against the estate by third parties for property damage or
18 personal injury. Third, under binding authority, the Trustee is not obligated to
19 remove all the equipment from the Pangborn Site.

20 [This Reply continues on the next page.]

1 **II. ARGUMENT**

2 **A. The Trustee Has Complied With the MRS/Abandonment Order**

3 The Trustee has until May 7, 2020¹ to remove the Pangborn Equipment
4 from the Pangborn Site. Otherwise, the stay will be lifted, and the Pangborn
5 Equipment will be deemed abandoned.

6 In compliance with the MRS/Abandonment Order, the Trustee has entered
7 into an agreement to sell the Pangborn Equipment, as more fully described in the
8 *Chapter 11 Trustee's Motion for Order Approving Sale of Equipment Free and*
9 *Clear of All Liens, Claims and Interests, etc.*, filed on March 30, 2020 [ECF 519]
10 and supporting papers. Subject to Court approval, the proposed buyer will pay
11 \$175,000 in exchange for the right to take any equipment from the Pangborn Site
12 as described in the Equipment Sale Motion. This represents a good faith effort to
13 help clean up the Pangborn Site while also bringing in funds to the estate.

14 **B. The Port Is Protected From Any Claim Arising From the Sale**

15 The estate has a Commercial General Liability insurance policy in the
16 amount of \$2 million. Further, if a third party asserts a claim against the Port
17 arising from the proposed sale, the estate's indemnification obligations can be
18 assessed at that time. There is no reason to litigate that issue in the abstract and as
19 part of a sale motion.
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22 ¹ The MRS/Abandonment Order states, "The court's intent is that this order shall
23 become effective forty-four (44) days from the date of entry." Order at 2:10-12. It
was entered on March 24, 2020.

1 **C. The Estate Is Not Obligated to Clean Up the Pangborn Site**

2 The Trustee rejected the Debtor's pre-petition lease with the Port. Pursuant
3 to section 365(g) of the Bankruptcy Code, the rejection constituted a breach as of
4 "immediately before the date of the filing of the petition." 11 U.S.C. § 365(g).
5 Therefore, claims arising from that breach are general unsecured. *See In re*
6 *Treesource Industries, Inc.*, 363 F.3d 994 (9th Cir. 2004) (failure of debtor to
7 comply with obligation to remove concrete slab and restore premises gave lessor
8 pre-petition, general, unsecured claim for rejection damages). Under *Treesource*,
9 the Port's claim for cleanup is general unsecured.

10 **D. The Pangborn Site Is in Orderly Condition**

11 The Port refers to debris and junk at the Pangborn Site, implying that the
12 Pangborn Site is a mess. This is not true. The Trustee and undersigned counsel
13 both visited the Pangborn Site in mid-February. It is in an orderly condition. *See*
14 *Egan Declaration*, filed herewith.

15 **III. CONCLUSION**

16 WHEREFORE, the Trustee respectfully requests entry of an Order:

- 17 1. Overruling the Limited Objection;
18 2. Granting the Equipment Sale Motion in its entirety; and
19 3. Granting such other relief as the Court deems appropriate and just.

20 Dated: April 8, 2020

POTOMAC LAW GROUP PLLC

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22 By: /s/ Pamela M. Egan
23 Pamela M. Egan (WSBA No. 54736)
 Attorneys for Mark D. Waldron, Chapter 11
 Trustee

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